

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JOSEPH DeGREGORY,

Plaintiff,

Docket Number:

- against -

FRANCIS J. DISCALA, JR., DISCALA & DISCALA,  
L.L.C., MICHAEL E. SKIBER and MICHAEL E.  
SKIBER, ESQ., LLC,

Defendants.

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**COMPLAINT**

Plaintiff, by his attorneys, **KLEIN & FOLCHETTI, P.C.**, complaining of the  
defendants herein, respectfully alleges the following:

**PARTIES**

1. That at all times herein mentioned, the plaintiff was and still is a citizen of the  
United States of America, residing in Putnam County, New York.

2. That upon information and belief, and at all times herein mentioned,  
defendant **FRANCIS J. DISCALA, JR.**, was and still is a citizen of the United States of  
America, residing at 32 Canal Road, in Westport, Fairfield County, Connecticut 06880.

3. That upon information and belief, and at all times herein mentioned,  
defendant **DISCALA & DISCALA, L.L.C.**, was and still is a limited liability company  
organized and existing under and by virtue of the laws of the State of Connecticut, with its  
principal place of business in Norwalk, Connecticut.

4. That upon information and belief, and at all times herein mentioned,

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**KLEIN & FOLCHETTI, P.C.**

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defendant **MICHAEL E. SKIBER** was and still is a citizen of the United States of America, residing at 142 Main Street, Unit 2, in Norwalk, Fairfield County, Connecticut 06051.

5. That upon information and belief, and at all times herein mentioned, defendant **MICHAEL E. SKIBER, ESQ., LLC**, was and still is a limited liability company organized and existing under and by virtue of the laws of the State of Connecticut, with its principal place of business in Bridgeport, Connecticut.

### **JURISDICTION**

6. That the jurisdiction properly lies in the United States District Court by virtue of the diversity of citizenship of the plaintiff and the defendants, as set forth in Title 28 U.S.C. §1332.

7. That the amount in controversy, exclusive of costs and interest, is in excess of the sum of **SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00)**.

8. That at the time and place specified herein, all defendants have transacted business within the State of New York and/or contracted to supply goods or services in the State of New York.

9. That upon information and belief, and at all times herein mentioned, all defendants have committed a tortious act within the State of New York, all as set forth in the Civil Practice Law and Rules of the State of New York.

10. That upon information and belief, and at all times herein mentioned, all defendants have committed a tortious act without the State of New York causing injury to a person or property within the state, and (i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used

or consumed or services rendered in the state, or (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce, and have thereby caused the injuries sustained by the plaintiff within the State of New York.

11. That upon information and belief, and at all times herein mentioned, and for a long time prior to the date of the events complained of herein, all defendants have transacted continuous and substantial business within the State of New York, and all defendants have regularly solicited business from within the State of New York, and have engaged in a permanent course of conduct in the promotion and advertisement of its business within the State of New York, and derive substantial revenue from the aforesaid course of conduct in the State of New York.

**VENUE**

12. That venue is proper in the Southern District of New York under 28 U.S.C. 1391(a)(2), as a substantial part of the events or omissions giving rise to the claim occurred within the Southern District of New York.

**JURY DEMAND**

13. The plaintiff demands that this case be tried to a jury.

**AS AND FOR A CAUSE OF ACTION ON  
BEHALF OF PLAINTIFF JOSEPH DeGREGORY**

14. That upon information and belief, and at all times herein mentioned, defendant **FRANCIS DiSCALA, JR.** was and still is an attorney duly licensed to engage in the practice of law within the State of Connecticut.

15. That upon information and belief, and at all times herein mentioned,



defendant **DISCALA & DISCALA, L.L.C.**, was and still is a limited liability company authorized to engage in the practice of law within the State of Connecticut.

16. That upon information and belief, and at all times herein mentioned, defendant **MICHAEL E. SKIBER** was and still is an attorney duly licensed to engage in the practice of law within the States of New York and Connecticut.

17. That upon information and belief, and at all times herein mentioned, defendant **MICHAEL E. SKIBER, ESQ., LLC**, was and still is a limited liability company authorized to engage in the practice of law within the State of New York.

18. That upon information and belief, and at all times herein mentioned, defendant **MICHAEL E. SKIBER, ESQ., LLC**, was and still is a limited liability company authorized to engage in the practice of law within the State of Connecticut.

19. That upon information and belief, and at all times herein mentioned, defendant **MICHAEL E. SKIBER, ESQ., LLC**, was and still is engaged in the practice of law under the name and style of "THE LAW OFFICE OF MICHAEL E. SKIBER."

20. That upon information and belief, and at all times herein mentioned, defendant **MICHAEL E. SKIBER** was and still is engaged in the practice of law under the name and style of "THE LAW OFFICE OF MICHAEL E. SKIBER."

21. That upon information and belief, and at all times herein mentioned, defendant **DISCALA & DISCALA, L.L.C.**, maintained an office for the practice of law at 11 North Main Street, Norwalk, Connecticut 06854.

22. That upon information and belief, and at all times herein mentioned, defendant **FRANCIS DiSCALA, JR.** maintained an office for the practice of law at 11 North

Main Street, Norwalk, Connecticut 06854.

23. That upon information and belief, and at all times herein mentioned, defendant **MICHAEL E. SKIBER, ESQ., LLC**, maintained an office for the practice of law at 15 Palisade Avenue, Suite 3, Yonkers, New York 10701.

24. That upon information and belief, and at all times herein mentioned, defendant **MICHAEL E. SKIBER** maintained an office for the practice of law at 15 Palisade Avenue, Suite 3, Yonkers, New York 10701.

25. That at all times herein mentioned, each defendant herein held himself out and represented himself to be a specialist in the field of law and as competent, able and qualified in the practice of law.

26. That at all times herein mentioned, each defendant herein held himself out and represented himself to be an attorney at law capable of rendering legal services in accordance with the standards of legal practice generally accepted in the community, and using approved methods in general use, reasonable care and skill, and his best judgment in rendering representation of the legal interests of his clients.

27. That at all times herein mentioned, each defendant herein held himself out and represented himself to possess the necessary level of skill, care and judgment ordinarily used and exercised by attorneys practicing in the community in which he maintained his office.

28. That on August 25, 2010, plaintiff **JOSEPH DeGREGORY** was involved in an accident in which he was a motorist struck by a motor vehicle at or near the vicinity of South Highland Avenue, at its intersection with Emwilton Place, in the Village of Ossining,

New York (hereafter referred to as the "claims").

29. That the aforesaid accident of August 25, 2010 was caused by reason of the negligence, liability and/or culpable conduct of other persons, specifically, one Ella Mintz and one Marcy A. Gray.

30. That by reason of the aforesaid accident of August 25, 2010, plaintiff **JOSEPH DeGREGORY** sustained serious injuries as defined by section 5102(d) of the Insurance Law of the State of New York.

31. That between August 25, 2010 and August 19, 2013, plaintiff **JOSEPH DeGREGORY** consulted with the defendants with regard to all claims and legal matters arising out of the aforesaid an accident of August 25, 2010 (hereafter referred to as the "claims").

32. That between August 25, 2010 and August 19, 2013, the defendants offered to plaintiff **JOSEPH DeGREGORY** a retainer agreement with regard to the aforesaid claims.

33. That between August 25, 2010 and August 19, 2013, plaintiff **JOSEPH DeGREGORY** accepted the terms of the aforesaid retainer agreement and retained the defendants to represent his interests with regard to the aforesaid claims.

34. That between August 25, 2010 and August 19, 2013, the defendants herein, and each of them, in anticipation of good and valuable consideration, and pursuant to the aforesaid retainer agreement, accepted the retention of plaintiff **JOSEPH DeGREGORY**, and thereby undertook to represent his interests with regard to the aforesaid claims.

35. That between August 25, 2010 and August 19, 2013, the defendants herein,



and each of them, in anticipation of good and valuable consideration, represented that he would render services in accordance with the standards of legal practice generally accepted in the community and to use in his representation of the plaintiff approved methods in general use, reasonable care and skill, and his best professional judgment.

36. That between August 25, 2010 and August 19, 2013, the defendants herein, and each of them, in anticipation of good and valuable consideration, represented that he would render services in accordance with the necessary level of skill, care and judgment ordinarily used and exercised by attorneys practicing in the community in which he maintained his office.

37. That between August 25, 2010 and August 19, 2013, the defendants herein, and each of them, in anticipation of good and valuable consideration, represented that he would render services in accordance with the standards of legal practice generally accepted in the community, and using approved methods in general use, reasonable care and skill, and his best judgment in rendering representation of the legal interests of his client.

38. That between August 25, 2010 and August 19, 2013, the defendants herein, and each of them, in anticipation of good and valuable consideration, undertook to represent the legal interests of the plaintiff in accordance with the standards of legal practice generally accepted in the community and to use in his representation of the plaintiff approved methods in general use, reasonable care and skill, and his best professional judgment.

39. That between August 25, 2010 and August 19, 2013, the defendants herein,

and each of them, in anticipation of good and valuable consideration, undertook to represent the legal interests of the plaintiff in accordance with the necessary level of skill, care and judgment ordinarily used and exercised by attorneys practicing in the community in which he maintained his office.

40. That between August 25, 2010 and August 19, 2013, the defendants herein, and each of them, in anticipation of good and valuable consideration, undertook to represent the legal interests of the plaintiff in accordance with the standards of legal practice generally accepted in the community, and using approved methods in general use, reasonable care and skill, and his best judgment in rendering representation of the legal interests of his clients.

41. That between August 25, 2010 and August 19, 2013, the defendants herein, and each of them, in anticipation of good and valuable consideration, agreed to represent the legal interests of the plaintiff in accordance with the standards of legal practice generally accepted in the community and to use in his representation of the plaintiff approved methods in general use, reasonable care and skill, and his best professional judgment.

42. That between August 25, 2010 and August 19, 2013, the defendants herein, and each of them, in anticipation of good and valuable consideration, agreed to represent the legal interests of the plaintiff in accordance with the necessary level of skill, care and judgment ordinarily used and exercised by attorneys practicing in the community in which he maintained his office.

43. That between August 25, 2010 and August 19, 2013, the defendants herein,



and each of them, in anticipation of good and valuable consideration, agreed to represent the legal interests of the plaintiff in accordance with the standards of legal practice generally accepted in the community, and using approved methods in general use, reasonable care and skill, and his best judgment in rendering representation of the legal interests of his clients.

44. That continuing until terminated by Consent to Change Attorney executed by or on behalf of one or more of the defendants on October 28, 2014, the defendants herein, and each of them, continuously represented the legal interests of the plaintiff with regard to the aforesaid claims.

45. That the plaintiff relied upon the defendants' representations that they were specialists skilled and competent in the field of law and that they were competent, able and qualified in the practice of law.

46. That the plaintiff relied upon the defendants' representations that they would represent his interests in accordance with the necessary level of skill, care and judgment ordinarily used and exercised by attorneys practicing in the community in which he maintained his office.

47. That the plaintiff relied upon defendants' representations that they would represent his interests in accordance with the standards of legal practice generally accepted in the community, and using approved methods in general use, reasonable care and skill, and his best professional judgment.

48. That among the necessary services to be rendered and provided by the defendants on behalf of the plaintiff was the proper and timely commencement and service

of a civil action against all parties liable for the aforesaid accident, doing so within the applicable time periods and deadlines prescribed by applicable law, rules, orders and/or directives, and doing so in accordance with the level of skill, care and judgment ordinarily used and exercised by attorneys practicing in the community in which the defendants maintained their offices.

49. That defendants herein, and each of them, failed to properly and timely commence and serve a civil action against all parties liable for the aforesaid accident, failed to do so within the applicable time periods and deadlines prescribed by applicable law, rules, orders and/or directives, and failed to do so in accordance with the level of skill, care and judgment ordinarily used and exercised by attorneys practicing in the community in which each maintained his office.

50. That defendants herein, and each of them, were negligent in failing to properly and timely commence and serve a civil action against all parties liable for the aforesaid accident, in failing to do so within the applicable time periods and deadlines prescribed by applicable law, rules, orders and/or directives, and in failing to do so in accordance with the level of skill, care and judgment ordinarily used and exercised by attorneys practicing in the community in which he maintained his office.

51. That the plaintiff relied upon all of the advice and representations made by the defendants, all to his detriment.

52. That the defendants herein, and each of them, negligently and carelessly rendered legal services in the course of representing the interests of the plaintiff with regard to the legal matters arising out of the aforesaid claims.

53. That but for the legal malpractice, negligence and carelessness of the defendants herein, and each of them, in the rendition of legal services as aforesaid, the plaintiff would have succeeded in the prosecution of a civil action against all parties liable for the aforesaid accident.

54. That solely by reason of the legal malpractice, negligence and carelessness of the defendants herein, and each of them, in the rendition of legal services as aforesaid, plaintiff **JOSEPH DeGREGORY** has sustained monetary damage and injury, all without any negligence, lack of ordinary care or other culpable conduct on the part of the plaintiff contributing thereto.

55. That solely by reason of all of the foregoing, plaintiff **JOSEPH DeGREGORY** has suffered damage and injury and demands judgment against the defendants herein, and each of them, in the sum of **EIGHTY THOUSAND DOLLARS (\$80,000.00)**, or such other sum as may be determined by the trier of fact of this action, together with the costs and disbursements of this action and such other and further relief which to this Court seems just and proper.


**WHEREFORE**, the plaintiff demands judgment against the defendants the sum of **EIGHTY THOUSAND DOLLARS (\$80,000.00)**, or such other sum as may be determined by the trier of fact of this action, together with the costs and disbursements of this action



and such other and further relief which to this Court seems just and proper.

Dated: Brewster, New York  
January 13, 2017

**KLEIN & FOLCHETTI, P.C.**  
Attorneys for Plaintiff

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